

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

Case No. 0:17-1884-PAM-HB

In re EpiPen ERISA Litigation,

**JOINT MOTION REGARDING CONTINUED SEALING**

Pursuant to Local Rule 5.6(c), documents were filed under temporary seal in connection with the following motions:

- Defendants CVS Health Corp., CaremarkPCS Health L.L.C., Caremark, L.L.C., and Caremark Rx, L.L.C.’s Motion to Dismiss [Dkt. 209];
- Defendants Express Scripts Holding Co., Express Scripts, Inc., and Medco Health Solutions, Inc.’s Motion to Dismiss [Dkt. 210];
- Defendants Optum, Inc., OptumRx Holdings, LLC, OptumRx, Inc., United HealthCare Services, Inc. and UnitedHealth Group Inc.’s Motion to Dismiss [Dkt. 211]; and
- Defendant Prime Therapeutics LLC’s Motion to Dismiss [Dkt. 212].

Pursuant to Local Rule 5.6(d), the parties submit this Joint Motion Regarding Continued Sealing.

DKT. NO.	DESCRIPTION OF DOCUMENT	MARK "X" IN APPLICABLE COLUMN			NONPARTY THAT DESIGNATED DOC. CONFIDENTIAL (IF ANY)	REASON WHY DOCUMENT SHOULD REMAIN SEALED OR BE UNSEALED
		Parties Agree Doc. Should Remain Sealed	Parties Agree Doc. Should Be Unsealed	Parties Disagree		
214	Unredacted copy of Defendants' Combined Memorandum of Law in Support of Their Motions to Dismiss the Consolidated Class Action Complaint	X				<p>A redacted copy of this brief was filed at Dkt. 215.</p> <p>Defendants assert that redacted portions of the brief contain citations to limited excerpts of non-public, highly competitive, proprietary and/or commercially sensitive contractual terms contained in Defendants' business contracts that have been marked Highly Confidential pursuant to the Protective Order [Dkt. 249]. In addition, the underlying documents which are cited were designated as confidential under a non-disclosure agreement between the contracting partners.</p> <p>Because Defendants are the designating parties, Plaintiffs</p>

						take no position on whether this document should remain under seal pursuant to Rule 5.6.
217	Excerpts of Pharmacy Benefit Management Agreement between Prime Therapeutics LLC (“Prime”) and Horizon Healthcare Services, Inc. (“Horizon”), dated November 2012 (Ex. A to O’Hara Decl.)	X				<p>Defendant Prime Therapeutics LLC (“Prime”) asserts that excerpts of this document contain non-public, highly competitive, proprietary and/or commercially sensitive contractual terms. In addition, the terms of this agreement were designated as confidential under a non-disclosure agreement between the contracting partners. This document has been marked as Highly Confidential pursuant to the Protective Order [Dkt. 249]. Finally, this document has no relevance to the pending Motions to Dismiss given Ms. Paschalidis’ voluntary dismissal [Dkt. 247], and should remain sealed pursuant to Magistrate Judge Rau’s April 2 Order [Dkt. 195].</p> <p>Because Prime is the designating party, Plaintiffs take no position on whether this</p>

						document should remain under seal pursuant to Rule 5.6.
218	Excerpts of Pharmacy Benefit Management Agreement between Prime and Blue Cross and Blue Shield of Florida, Inc. ("Florida Blue"), entered into as of January 1, 2013  (Ex. B to O'Hara Decl.)	X				<p>Prime asserts that excerpts of this document contain non-public, highly competitive, proprietary and/or commercially sensitive contractual terms. In addition, the terms of this agreement were designated as confidential under a non-disclosure agreement between the contracting partners. This document has been marked as Highly Confidential pursuant to the Protective Order [Dkt. 249].</p> <p>Because Prime is the designating party, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6.</p>
219	Excerpts of Pharmacy Benefit Management Agreement between Prime and Florida Blue, entered into as of January 1, 2016  (Ex. C to O'Hara Decl.)	X				<p>Prime asserts that excerpts of this document contain non-public, highly competitive, proprietary and/or commercially sensitive contractual terms. In addition, the terms of this agreement were designated as confidential under a non-disclosure agreement between</p>

						<p>the contracting partners. This document has been marked as Highly Confidential pursuant to the Protective Order [Dkt. 249].</p> <p>Because Prime is the designating party, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6.</p>
226	Unredacted Declaration of Hillary Timmons-Tejeda	X				<p>A redacted copy of this declaration was filed at Dkt. 227.</p> <p>Prime asserts that redacted portions of this declaration contain references to HIPAA Protected Health Information of now-dismissed Named Plaintiff Arissa Paschalidis. <i>See</i> 45 C.F.R. § 160.103. In addition, this document has no relevance to the pending Motions to Dismiss given Ms. Paschalidis' voluntary dismissal [Dkt. 247], and should remain sealed for the same reasons set forth in Magistrate Judge Rau's April 2 Order [Dkt. 195].</p>

						Because Prime is the designating party, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6.
228	Report of all prescription drug purchases shown in Prime's Records for (now-dismissed) Named Plaintiff Arissa Paschalidis  (Ex. A to Timmons-Tejada Decl.)	X				<p>Prime asserts that this document contains HIPAA Protected Health Information of now-dismissed Named Plaintiff Arissa Paschalidis <i>See</i> 45 C.F.R. § 160.103. In addition, this document has no relevance to the pending Motions to Dismiss given Ms. Paschalidis' voluntary dismissal [Dkt. 247], and should remain sealed for the same reasons set forth in Magistrate Judge Rau's April 2 Order [Dkt. 195].</p> <p>Because Prime is the designating party, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6.</p>
229	Report of (now-dismissed) Named Plaintiff Arissa Paschalidis insurance coverage	X				Prime asserts that this document contains HIPAA Protected Health Information of now-dismissed Named Plaintiff Arissa Paschalidis. <i>See</i> 45

	(Ex. B to Timmons-Tejada Decl.)					<p>C.F.R. § 160.103. In addition, this document has no relevance to the pending Motions to Dismiss given Ms. Paschalidis' voluntary dismissal [Dkt. 247], and should remain sealed for the same reasons set forth in Magistrate Judge Rau's April 2 Order [Dkt. 195].</p> <p>Because Prime is the designating party, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6.</p>
232	<p>Excerpts of Participating Group Services Agreement between CaremarkPCS Health, L.L.C. and U.S. Bancorp, entered into as of January 1, 2015</p> <p>(Ex. 1 to Oesterle Decl.)</p>	X				<p>Defendant CaremarkPCS Health, L.L.C. ("CaremarkPCS Health") asserts that the excerpted document contains the non-public, highly competitive, and proprietary business information of CVS and/or its subsidiaries, and the terms of agreements designated as confidential under non-disclosure agreements between U.S. Bancorp and a subsidiary of CVS. This document has been designated as Highly Confidential pursuant to the Protective Order [Dkt. 249].</p>

						Because CaremarkPCS Health is the designating party, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6.
233	Amended and Restated Pharmacy Benefit Management Subcontract Agreement by and between Aetna Health Management, LLC and CaremarkPCS Health, L.L.C., dated as of October 2, 2013 (Ex. 2 to Oesterle Decl.)	X				<p>CaremarkPCS Health asserts that the excerpted document contains the non-public, highly competitive, and proprietary business information of CVS and/or its subsidiaries, and the terms of agreements designated as confidential under non-disclosure agreements between Aetna Health Management and a subsidiary of CVS. This document has been designated as Highly Confidential pursuant to the Protective Order [Dkt. 249].</p> <p>Because CaremarkPCS Health is the designating party, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6.</p>



236	Excerpts of the Integrated Prescription Drug Program Master Agreement entered into on January 1, 2009 by U.S. Bancorp and Medco Health Solutions, Inc. (Ex. A to Hart Decl.)	X				<p>Defendant Medco Health Solutions, Inc. (“Medco”) asserts that excerpts of this document contain non-public, highly competitive, proprietary and/or commercially sensitive contractual terms. Additionally, U.S. Bancorp and Medco Health Solutions, Inc. agreed to keep the terms of this agreement confidential. This document has been marked as Highly Confidential pursuant to the Protective Order [Dkt. 249].</p> <p>Because Medco is the designating party, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6.</p>
237	Excerpts of the Amendment to the Integrated Prescription Drug Program Master Agreement entered into on January 1, 2011 by U.S. Bancorp and Medco Health Solutions, Inc. (Ex. B to Hart Decl.)	X				<p>Medco asserts that excerpts of this document contain non-public, highly competitive, proprietary and/or commercially sensitive contractual terms. Additionally, U.S. Bancorp and Medco Health Solutions, Inc. agreed to keep the terms of this agreement confidential. This document has been marked as</p>

						<p>Highly Confidential pursuant to the Protective Order [Dkt. 249].</p> <p>Because Medco is the designating party, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6.</p>
238	Excerpts of an amendment to the Integrated Prescription Drug Program Master Agreement entered into on February 4, 2013 by U.S. Bancorp and Medco Health Solutions, Inc. (Ex. C to Hart Decl.)	X				<p>Medco asserts that excerpts of this document contain non-public, highly competitive, proprietary and/or commercially sensitive contractual terms. Additionally, U.S. Bancorp and Medco Health Solutions, Inc. agreed to keep the terms of this agreement confidential. This document has been marked as Highly Confidential pursuant to the Protective Order [Dkt. 249].</p> <p>Because Medco is the designating party, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6.</p>
239	Excerpts of the Prescription Drug Program Agreement	X				<p>Defendant Express Scripts Inc. (“ESI”) asserts that excerpts of this document contain non-</p>

	<p>entered into on January 1, 2017 by U.S. Bancorp and Express Scripts Inc. (Ex. D to Hart Decl.)</p>					<p>public, highly competitive, proprietary and/or commercially sensitive contractual terms. Additionally, U.S. Bancorp and ESI agreed to keep the terms of this agreement confidential. This document has been marked as Highly Confidential pursuant to the Protective Order [Dkt. 249].</p> <p>Because ESI is the designating party, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6.</p>
242	<p>Excerpts of the Agreement for Health Care Plan Services entered into on January 1, 2001 (as amended and restated January 1, 2004) between Delta Air Lines, Inc., Delta Benefits Management, Inc., the Delta Family-Care Medical Plan, the Delta Pilots Medical Plan and United Healthcare Insurance Company.</p>	X				<p>Defendant UnitedHealthcare Services, Inc. asserts that excerpts of this document contain non-public, highly competitive, proprietary and/or commercially sensitive contractual terms. In addition, the contracting parties agreed to keep the terms of this agreement confidential. This document has been marked as Highly Confidential pursuant to the Protective Order [Dkt. 249].</p>

	(Ex. A to Nguyen Decl.)					Because UnitedHealthcare Services, Inc. is the designating party, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6.
243	Excerpts of the Sixth Amendment to the Agreement For Health Care Plan Services (as amended and restated January 1, 2004) made by and between United HealthCare Insurance Company and Delta Air Lines, Inc., Delta Benefits Management, Inc., Delta Family-Care Medical Plan, Delta Account-Based Healthcare Plan, and Delta Pilots Medical Plan (Ex. B to Nguyen Decl.)	X				<p>United HealthCare Services, Inc. asserts that excerpts of this document contain non-public, highly competitive, proprietary and/or commercially sensitive contractual terms. In addition, the contracting parties agreed to keep the terms of this agreement confidential. This document has been marked as Highly Confidential pursuant to the Protective Order [Dkt. 249].</p> <p>Because United HealthCare Services, Inc. is the designating party, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6.</p>
244	Excerpts of the Twelfth Amendment to the Agreement For Health Care Plan Services (as	X				United HealthCare Services, Inc. asserts that excerpts of this document contain non-public, highly competitive, proprietary

	<p>amended and restated January 1, 2004) made by and between United HealthCare Services, Inc. and Medica Self-Insured and Delta Air Lines, Inc., Delta Family-Care Medical Plan, Delta Account-Based Healthcare Plan, Northwest Healthcare Plan and Delta Pilots Medical Plan.</p> <p>(Ex. C to Nguyen Decl.)</p>					<p>and/or commercially sensitive contractual terms. In addition, the contracting parties agreed to keep the terms of this agreement confidential. This document has been marked as Highly Confidential pursuant to the Protective Order [Dkt. 249].</p> <p>Because United HealthCare Services, Inc. is the designating party, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6.</p>
245	<p>Excerpts of the Prescription Drug Benefit Administration Agreement entered into on January 1, 2013 by and between United HealthCare Services, Inc. and OptumRx, Inc.</p> <p>(Ex. D to Nguyen Decl.)</p>	X				<p>United HealthCare Services, Inc. and OptumRx, Inc. assert that excerpts of this document contain non-public, highly competitive, proprietary and/or commercially sensitive contractual terms. In addition, the contracting parties agreed to keep the terms of this agreement confidential. This document has been marked as Highly Confidential pursuant to the Protective Order [Dkt. 249].</p>

						Because United HealthCare Services, Inc. and OptumRx are the designating parties, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6.
246	Excerpts of the Second Amendment to the Prescription Drug Benefit Administration Agreement entered into on September 1, 2015, by and between OptumRx, Inc. f/k/a RxSolutions, Inc., d/b/a Prescriptions Solutions, and United HealthCare Services, Inc. (Ex. E to Nguyen Decl.)	X				<p>United HealthCare Services, Inc. and OptumRx, Inc. assert that excerpts of this document contain non-public, highly competitive, proprietary and/or commercially sensitive contractual terms. In addition, the contracting parties agreed to keep the terms of this agreement confidential. This document has been marked as Highly Confidential pursuant to the Protective Order [Dkt. 249].</p> <p>Because United HealthCare Services, Inc. and OptumRx are the designating parties, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6.</p>

258	Unredacted copy of Plaintiffs' Memorandum of Law in Opposition to Defendants' Motions to Dismiss	X				<p>A redacted copy of this brief was filed at Dkt. 259.</p> <p>Defendants assert that redacted portions of this brief contain citations to non-public, highly competitive, proprietary and/or commercially sensitive contractual terms contained in Defendants' business contracts that have been marked Highly Confidential pursuant to the Protective Order [Dkt. 249]. In addition, the underlying documents which are cited were designated as confidential under a non-disclosure agreement between the contracting partners.</p> <p>Because Defendants are the designating parties, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6.</p>
262	Pharmacy Benefit Management Agreement between Prime and Blue Cross and Blue Shield of Florida, Inc. ("Florida	X				<p>Plaintiffs filed this document in its entirety in support of their opposition to Defendants' motion to dismiss.</p>

	Blue”), entered into as of January 1, 2013 (Ex. 1 to Obrist Decl.)					Prime asserts that in order to protect its confidential information, either (a) the entire document should remain under seal or (b) Plaintiffs should file under seal a version of the document that only includes excerpts of the information that Plaintiffs cited in their opposition. This position is supported on multiple grounds, including but not limited to the fact that the document contains non-public, highly competitive, proprietary and/or commercially sensitive contractual terms, including pricing terms and ancillary terms affecting prices, and terms revealing the proprietary packaging of certain services, which are non-public, and specific and confidential to the contracting partners, all of which are not relevant to Plaintiffs’ citation [Dkt. 258 at 64, fn. 41]; because the contract is designated as confidential under a non-disclosure agreement between the contracting parties; and because
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						<p>specifically with respect to subpart (b), although Magistrate Judge Rau’s April 2 Order directed that the “filer” must “limit the amount of sealed material” [Dkt. 195 at 5], Plaintiffs filed the entire 63-page contract while only citing two definitional sentences.</p> <p>Because Prime is the designating party, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6. If the Court finds sealing is appropriate under Rule 5.6, Plaintiffs agree with Prime, as outlined in subpart (a) above, that the document should remain under seal in its entirety. Plaintiffs do not agree to the approach outlined by Prime in subpart (b); it is inappropriate for Prime to substantively alter Plaintiffs’ motion to dismiss response through a Rule 5.6 filing. Plaintiffs do not agree with Prime’s relevance claims above, and as explained in</p>
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						<p>Plaintiffs' MTD Opposition brief (ECF No. 258), submission of mere excerpts of contracts is inappropriate and misleading because neither the Court nor the parties can understand excerpts without their full context. If the Court does not seal the entire document as submitted as outlined in subpart (a) above, then Plaintiffs propose the alternative of publicly filing a redacted full version that redacts everything not cited or relied upon in the MTD briefing.</p>
263	<p>Pharmacy Benefit Management Agreement between Prime and Florida Blue, entered into as of January 1, 2016 (Ex. 2 to Obrist Decl.)</p>	X				<p>Plaintiffs filed this document in its entirety in support of their opposition to Defendants' motion to dismiss.</p> <p>Prime asserts that in order to protect its confidential information, either (a) the entire document should remain under seal or (b) Plaintiffs should file under seal a version of the document that only includes excerpts of the</p>

						<p>information that Plaintiffs cited in their opposition. This position is supported on multiple grounds, including but not limited to the fact that the document contains non-public, highly competitive, proprietary and/or commercially sensitive contractual terms, including pricing terms and ancillary terms affecting prices, and terms revealing the proprietary packaging of certain services, which are non-public, and specific and confidential to the contracting partners, all of which are not relevant to Plaintiffs' citation [Dkt. 258 at 64, fn. 41]; because the contract is designated as confidential under a non-disclosure agreement between the contracting parties; and because specifically with respect to subpart (b), although Magistrate Judge Rau's April 2 Order directed that the "filer" must "limit the amount of sealed material" [Dkt. 195 at 5], Plaintiffs filed the entire 73-</p>
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						<p>page contract while only citing two definitional sentences.</p> <p>Because Prime is the designating party, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6. If the Court finds sealing is appropriate under Rule 5.6, Plaintiffs agree with Prime, as outlined in subpart (a) above, that the document should remain under seal in its entirety. Plaintiffs do not agree to the approach outlined by Prime in subpart (b); it is inappropriate for Prime to substantively alter Plaintiffs' motion to dismiss response through a Rule 5.6 filing. Plaintiffs do not agree with Prime's relevance claims above, and as explained in Plaintiffs' MTD Opposition brief (ECF No. 258), submission of mere excerpts of contracts is inappropriate and misleading because neither the Court nor the parties can understand excerpts without</p>
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						<p>their full context. If the Court does not seal the entire document as submitted as outlined in subpart (a) above, then Plaintiffs propose the alternative of publicly filing a redacted full version that redacts everything not cited or relied upon in the MTD briefing.</p>
269	Unredacted copy of Defendants' Combined Reply in Support of Their Motions to Dismiss	X				<p>A redacted copy of this brief was filed at Dkt. 270.</p> <p>Defendants assert that redacted portions of the brief contain citations to limited excerpts of highly sensitive, proprietary business information contained in Defendants' documents that have been marked Highly Confidential pursuant to the Protective Order [Dkt. 249]. In addition, the underlying documents which are cited were designated as confidential under a non-disclosure agreement between the contracting partners.</p>

						Because Defendants are the designating parties, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6.
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Dated: September 20, 2018

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